

No. 86-757

Supreme Court, U.S.  
FILED

JAN 8 1987

JOSEPH F. SPANIOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

OLYMPUS CORPORATION,

*Petitioner,*

vs.

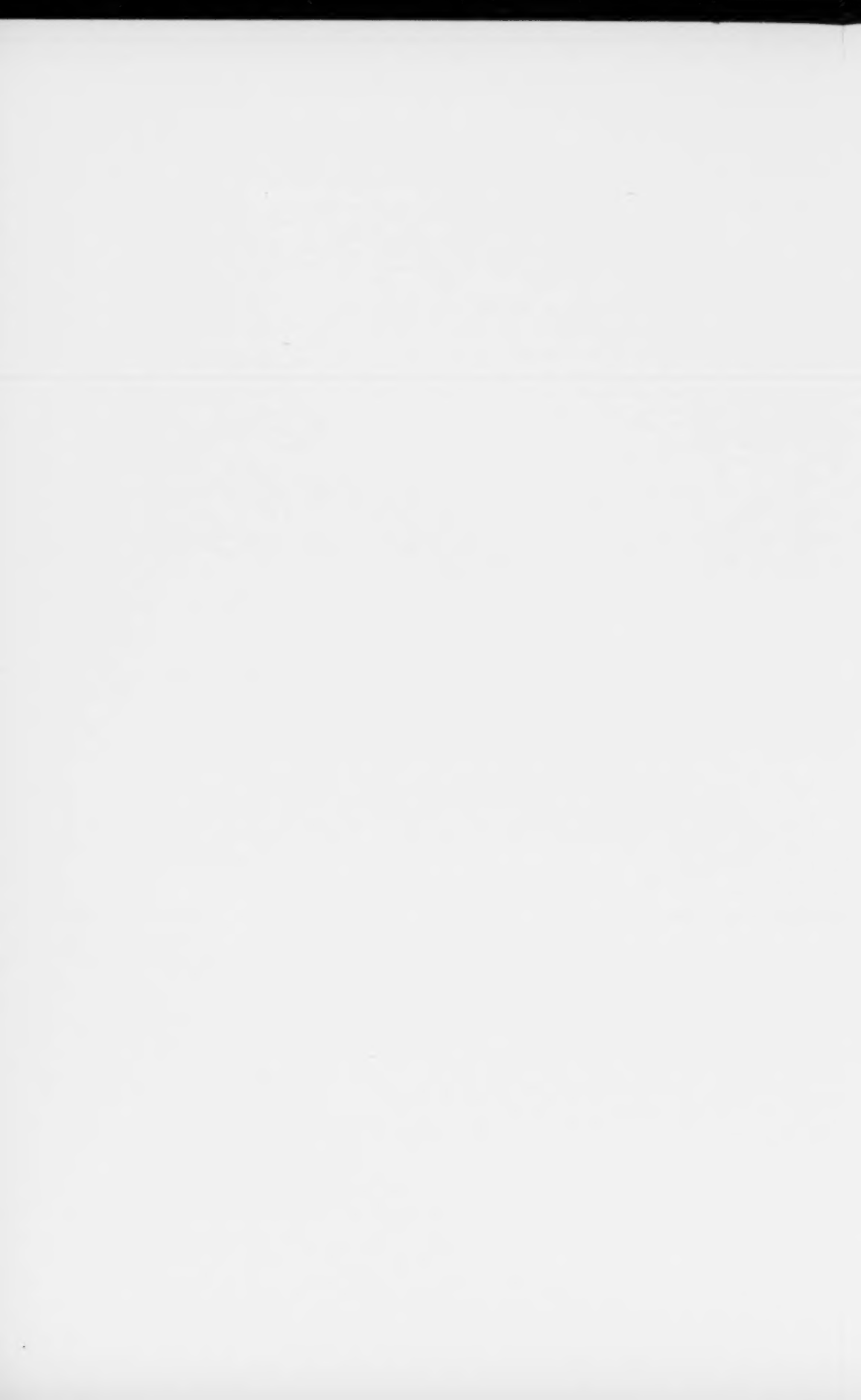
UNITED STATES, ET AL., K-MART CORPORATION,  
47TH STREET PHOTO, INC.,

*Respondents.*

**REPLY OF OLYMPUS CORPORATION  
IN CONNECTION WITH ITS PETITION FOR A  
WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT**

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In their response to Olympus Corporation's ("Olympus")<sup>1</sup> petition for a writ of certiorari, the federal defendants suggest that the Court defer consideration of the petition pending a determination of the three petitions granted in *Coalition to Preserve the Integrity of American Trademarks ("COPIAT") v. United*

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<sup>1</sup> Olympus' Rule 28.1 listing is contained in its petition.

*States*, 790 F.2d 903 (D.C. Cir. 1986).<sup>2</sup> The Court should, however, grant Olympus' petition and consolidate it with those of the other three parties for the following reasons:

1. All agree that the substantive issue of statutory construction presented by Olympus' petition is the same as that which the Court has already accepted in *COPIAT*.

2. The respondents here are the identical parties whose petitions were granted in *COPIAT*. Thus, to consolidate this petition with those of the respondents in *COPIAT* would only result in the addition of one more party, Olympus.

3. Olympus has expended considerable time, money and energy pursuing this controversy. It would be unjust to compel it to rely upon another party to argue its position before this Court, particularly when no additional burden or prejudice will be visited upon any of the other parties as a result.

4. Presumably, one of the principal reasons the Court voted to accept the petitions in *COPIAT* was the direct conflict presented between the decisions of the District of Columbia Circuit in that case and the Second Circuit in this case. A grant of this petition and its consolidation with the petitions in *COPIAT* would bring both Court of Appeals' determinations before this Court at the same time, thus providing for more efficient and effective review.

5. Finally, the Court should hear argument from all involved parties. The substantial good will which Olympus has developed and maintained in its "Olympus" trademark is directly affected. K-mart and 47th Street Photo, intervenors only in both *COPIAT* and this case, have no such interest to protect; their

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<sup>2</sup> The petitions granted on December 8, 1986 were those of the United States (No. 86-625), 47th Street Photo, Inc. (No. 86-624), and K-mart Corporation (No. 86-245), all of whom are respondents in this case. 47th Street Photo has taken the position that Olympus' petition should be granted, while K-mart's view is that it should be denied. Clearly, however, denial of Olympus' petition in light of the decision by the Court to review the D.C. Circuit's determination of the same issue would be inappropriate.

effort is merely to ensure a steady flow of gray market merchandise from which they may profit. COPIAT, while on the same side of the controversy as Olympus, is a trade association representing diverse interests which are not necessarily coextensive with those of Olympus.

WHEREFORE, Olympus Corporation respectfully requests that the Court grant its petition for a writ of certiorari.

Respectfully submitted,

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Dated: January 6, 1987